



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/173190

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2016, under Wis. Stat., §49.45(5), to review a decision by the Marathon County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on May 11, 2016, at Wausau, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the county correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner's two youngest children received BadgerCare Plus (BC+) MA in 2013 and thereafter because household income was listed as being under 185% of the federal poverty level (FPL), with the parents and two older children ineligible because they were covered by insurance through petitioner's employer.

3. On November 18, 2013 the county sent petitioner a notice about eligibility. The notice informed petitioner that she needed to report to the county if household income rose above \$4,870.13 in a month. At the time the county was budgeting \$4,462.54 monthly from petitioner's employment.
4. In January, 2014, household income rose above the reporting threshold due to income from petitioner's husband. Income remained above that amount thereafter through July, 2015. Petitioner reported no changes during that time.
5. The agency noted the higher income after receiving a state wage match in October, 2014. Also in October, 2014 the household had a review, and at the review the way that income was calculated changed to the MAGI method that was put in place following a change in state law in 2014.
6. At the October, 2014 review petitioner's husband's income was added, and household income was budgeted at \$4,972.02 monthly. The reporting threshold then was \$5,088.56. Petitioner did not note that household income was higher, and BC+ continued. See notice dated October 31, 2014. In actuality household income was at least \$5,588 from November, 2015 through July, 2015.
7. The agency again noted higher income again in the summer, 2015. Actual income was obtained from the employers and from the unemployment compensation office. The county determined that the household would have been totally ineligible for BC+ from March 1, 2014 through July 31, 2015 if income had been reported correctly.
8. By a notice dated March 15, 2016, the county informed petitioner that the household was overpaid a total of \$2,452.43 for the periods March 1, 2014 through February, 28, 2015 and June 1 through July 1, 2015. Then on April 15, 2016 the county sent a second notice informing petitioner that the household was overpaid \$501.96 from March 1 through May 31, 2015. The total overpayment of \$2,954.39 was broken down into four claim numbers: [REDACTED]
[REDACTED]

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Petitioner did not dispute the county's income calculations or the conclusion that the household was over the BC limit in the months in question. Petitioner's position was that the household regularly reported income and thus it was the agency's error. However, prior to October, 2014, there is no record that petitioner reported income from her husband. Then, after his income was reported, it is clear that it was under-reported. A notice dated October 31, 2014 showed household income to total \$4,972.02, and petitioner made no effort to correct the agency. Actual income in October, 2014 was \$7,486, and in November, 2014 actual income was \$5,588. In November the earned income was budgeted approximately correctly, but petitioner's also received \$553 in unemployment compensation that was not budgeted.

I cannot conclude that the agency erred in its determinations. The primary reasons for the overpayments were first petitioner's failure to report her husband's income in early 2014, and then petitioner's failure to report increases in income and receipt of unemployment in late 2014.

Petitioner argued that the agency should not be able to recover the overpayment due to the doctrine of laches. Laches is a common law equitable defense that dates back to old English law. It remains effective in this country, but only a Circuit Court judge can rule on it. Administrative law judges do not have authority to provide equitable relief. That said, I do not believe that petitioner was prejudiced by any delay.

The original wage match was noted in October, 2014. The discrepancy was not reporting petitioner's husband's income. At that point his income was reported, so benefits beginning November 1, 2014 were not affected by the wage discrepancy found in October, 2014. The household already was overpaid from March through October, 2014. If I understand petitioner's position, she argues that if the county had done the overpayment immediately in October, 2014, the later overpayments would not have occurred because the county would have discovered the problem then and made the household ineligible. The problem with that position is that the basis of the overpayment changed beginning November, 2014. It no longer was that petitioner failed to report her husband's income; it was that petitioner did not report all of his income. The county would have had reason to catch that discrepancy in October, 2014.

CONCLUSIONS OF LAW

The county correctly determined MA overpayments that were issued to petitioner's household from March, 2014 through July, 2015.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

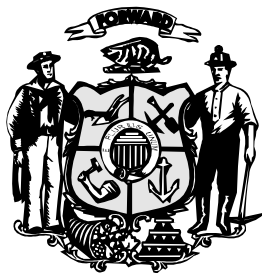
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 16, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability